

Chesapeake Bay Critical Area Commission
North East River Yacht Club
North East, MD 21901
June 3, 1998

AGENDA

SUBCOMMITTEES

10:00 a.m. - 11:30 a.m. Project Evaluation

Members: Langner, Bourdon, Giese, Goodman, Corkran, Foor, Blake, Cooksey, Hearn, Deitz,
Castleberry, Graves, Wilde

St. Mary's City - Smith's Ordinary	Tracy Batchelder, Planner
St. Mary's City - Restrooms	Tracy Batchelder, Planner
Conditional Approval for Dowell Elementary School	Dawnn McCleary, Planner
Baltimore City, Maryland Port Administration	Dawnn McCleary, Planner
Cargo shed extension	
Town of Elkton, SHA, Bridge Repl. Big Elk Creek	Susan McConville, Planner

11:00 a.m. - Program Amendment

Members: Whitson, Myers, Taylor-Rogers, Evans, Barker, Duket, Moxley, Williams, Robinson,
Wynkoop, Foor, Pinto, Johnson, Lawrence

Anne Arundel County -	Ren Serey, Executive Director
Uses in the RCA/Discussion & Consideration	Lisa Hoerger, Planner

12:00 p.m. - 1:00 p.m. - LUNCH

PLENARY MEETING

1:00 p.m. - 1:05 p.m.	Approval of Minutes of May 6, 1998	John C. North, II, Chair
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1:05 p.m. - 1:15 p.m.	WELCOME	Melissa Cooke-Mackenzie, Town Administrator
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PROGRAM AMENDMENTS and REFINEMENTS

1:15 p.m. - 1:25 p.m.	Calvert County - Refinement Mapping Mistake/Dowell Elem. School	Dawnn McCleary, Planner
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PROJECT EVALUATION

1:25 p.m. - 1:35 p.m.	VOTE Calvert County Conditional Approval for Dowell Elementary School	Dawnn McCleary, Planner
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1:35 p.m. - 1:50.m.	VOTE Baltimore City MD Port Administration Cargo shed extension at South Locust Point Marine Terminal	Dawnn McCleary, Planner
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O V E R

1:50 p.m. - 2:05 p.m.	VOTE St. Mary's City, Smith's Ordinary	Tracey Batchelder, Planner
2:05 p.m. - 2:15 p.m.	VOTE St. Mary's City, Restrooms	Tracey Batchelder, Planner
2:15 p.m. - 2:25 p.m.	VOTE Elkton, SHA Bridge Replacement Over Big Elk Creek	Susan McConville, Planner

2:25 p.m. - 3:15 p.m.	Old Business	John C. North, II, Chairman
	New Business	

Next Commission Meeting Crownsville, July 1, 1998

Chesapeake Bay Critical Area Commission
 Department of Housing and Community Development
 People's Resource Center
 Crownsville, Maryland 21401

May 6, 1998

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development, Crownsville, Maryland. The meeting was called to order by Michael Whitson, acting Vice-Chair with the following Members in attendance:

Pinto, Robert, Somerset County	Hearn, J. L., Md. Dept. Of Environ.
Bourdon, Dave, Calvert County	Rogers, Dr. Sarah Taylor-DNR
Barker, Philip J., Harford County	Whitson, Michael, St. Mary's
Cooksey, David, Charles County	Goodman, Robert, DHCD
Graves, Charles, Baltimore City	Castleberry, William, Dept. Business and Econ.
Deitz, Mary, MDOT	Wynkoop, Samuel, Prince George's County
Robinson, Ed, Eastern Shore MAL	Johnson, Samuel Q., Wicomico County
Dr. Foor, James C., Queen Anne's Co.	Lawrence, Louise, Md. Dept. Of Agriculture
Giese, William, Jr., Dorchester Co.	Langner, Kathryn, Cecil County
Duket, Larry F., Office of Planning	

The Minutes of April 1, 1998 were approved as read.

The **Town of Denton's** request for converting 21.88 acres of Limited Developed Area to an Intensely Developed Area because of mapping mistake was presented by Roby Hurley, Circuit Rider, CBCAC. The Town contends that the LDA designation was not consistent with the LDA mapping standards included in the Criteria and used by the Town. The mapping mistake is proposed as a refinement because the proposed changes and the effect of the changes on the use of land and water in the Critical Area are consistent with what is currently allowed by the Chesapeake Bay Critical Area Program. The Chairman determined that this correction is a refinement to the Town's program. The Commission supported the Chairman's determination.

The **Anne Arundel County** project for CSX/Cox Creek Dredged Material Containment Facility requested by the Maryland Port Administration for a proposed storm water pond in the expanded Buffer was presented by Lisa Hoerger, Environmental Specialist, CBCAC for conditional approval. Ms. Hoerger described the details of the project for reconstructing and stabilizing the containment cells on the property to receive dredge material from the Baltimore Harbor channels and stated that before reconstruction of the cells begins, the existing storm water system has to be re-routed. She addressed the storm water quality and mitigation issues and said that there are no threatened or endangered species. For conditional approval, the proposing agency must show that the project has certain characteristics which Ms. Hoerger outlined for the Commission. Additionally, the project is consistent with the Commission's regulations for Conditional Approval of State for Local Agency Programs in the Critical Area with the following conditions: 1) recommended approval as the applicant is providing for the first half inch of storage for the impervious areas based on the site plan submitted; 2) if the applicant fails to receive permits from the Maryland Department of the Environment and/or the Army Corps of Engineers, or if as a result of obtaining those permits, the design changes, the applicant shall resubmit the revised plan to the Commission for approval; and 3) the applicant will provide Commission staff with final figures regarding mitigation for all clearing and/or impacts that will result both inside and outside the Buffer, and will coordinate an appropriate on-site or off-site area for planting. Kay Langner moved for conditional approval of the CSX/Cox Creek Dredged Material Containment Facility with conditions: The motion was seconded by Bob Pinto and carried unanimously.

St. Mary's County's proposal for expansion of Charles Hall at St. Mary's College was presented by Mary Owens, Chief Program Implementation, CBCAC. She said that this expansion is needed to serve the expanding student population and involves a two story addition to the existing building, modifications to the existing parking lot, alterations to an existing courtyard and exterior planters, and the installation of two best management practices for storm water management. Ms. Owens discussed the removal of phosphorus using the 10% calculations; retrofitting of the outfall to slow the water's flow; the removal of trees and their mitigation and best management practices to deal with the runoff from this project. She said that a permit from the Maryland Department of the Environment will be required because of the minor impacts to the tidal wetlands and the project will be constructed in an existing developed area. There are no known or threatened or endangered plant or animal species affected. The project is consistent with Comar 27.02.05. Kay Langner moved to approve the St. Mary's College Charles Hall expansion project as presented. The motion was seconded by Bob Goodman and carried unanimously.

St. Mary's County's proposal to relocate and reconstruct an existing direct driveway that provides access to the boathouse at St. Mary's College was presented by Mary Owens. She said that this is needed in order to provide improved access for the handicapped, for deliveries by service vehicles, and to correct an ongoing erosion problem. The existing dirt driveway is located in a natural drainage swale and contributes to accelerated erosion along the shoreline. She stated that no forest clearing is involved and Best Management Practices are not necessary, there are no known threatened or endangered plant or animal species affected and no tidal or nontidal wetland impacts. Sediment and erosion control measures will be installed and the project is consistent with COMAR 27.02.05. Kay Langner moved to approve the St. Mary's College boathouse road modification project as proposed. The motion was seconded by Bob Goodman and carried unanimously.

The Town of Chesapeake Beach's request for approval of a map amendment to designate an undeveloped 5.2 acre property within the town as a Buffer Exemption Area, Tidewater Homes, was presented by Mary Owens. Ms. Owens reiterated the technical details of the proposal. She said that in January, 1998 the applicant requested that the tidal wetlands be remapped and a survey determined that the wetlands were above the mean high tide elevation and as a result were remapped as non-tidal wetlands. This changed the complexion of the project -the buffer moved and the tidal wetlands were redesignated as non-tidal wetlands. Subsequently, the non-tidal areas were classified as the expanded buffer. A Buffer exemption is requested for the purpose of filling in and construction in that area.

Ken Muller, the developer, explained the project design to the Commission.

Kevin McCarthy, wetlands delineator, and a registered professional Forester of McCarthy and Associates, gave a history of the project and his examination of the wetlands. Mr. John Hoffman, spoke on behalf of the Town and the request for BEA.

Ms. Owens said that if this property is designated as a BEA then the provisions of the Commission's BEA policy must apply and that certain conditions must apply: no development can be permitted in the BEA unless the applicant demonstrates that there is no feasible alternative and must make efforts to minimize the shoreward intrusion into the BEA, the development cannot impact any other habitat protection areas, no natural vegetation may be removed from the Buffer except that required by the construction and any development in the Buffer will require mitigation. The town believes that this project meets the BEA criteria, there are no alternative sites, further reduction in the scope of the project will make the project not economically viable, and efforts have been made to minimize intrusion into the Buffer with a retaining wall. Wetland and Buffer mitigation will be required in accordance with the Commission's policy. During discussions over this project many of the issues became conditions: an MDE approval to fill the wetlands and the developer must continue to work with the Commission staff to minimize any impacts during the evolving design of this project, and the location of the mitigation site to 1/2 acre. The tidegate operation was an issue where in order for any of the mitigation to succeed, the tidegate must be operated in a proper manner.

Tom Deming, Attorney representing Chesapeake Beach Joint Venture, Seagate Condominium said that his clients will contest MDE's redesignation of wetlands and the decision to issue permits pursuant to those redesignations. He said that the nature of this project was changed when MDE made a decision to reexamine the wetlands and as such the BEA is tied to the MDE permits. Mr. Deming said that Chesapeake Beach did not map this area a Buffer Exemption Area in their original program but now they say they want it changed. He said that according to the Statute based on the standard of mistake in the Bellanca decision, this cannot be approved because there is no basis for allowing a program amendment from LDA to IDA. Further, the Commission is authorized to enforce through variance the absolute protection of the Buffer - a policy issue.

Ms. Marianne Mason, Commission Counsel, said that there is no legal issue as Mr. Deming suggests in approving a change to a zoning map based on mistake. Because the BEA designation is not a zoning map amendment, it is not constrained by the application of the proof of mistake standard. The BEA designations have been treated by the Commission in the past absent and apart from any claim of mistake from local jurisdictions and that is unnecessary and not an issue that would constrain or restrain the Commission from voting on this application. David Cooksey moved on behalf of the Chesapeake Panel for approval of the BEA request for Chesapeake Beach with the following conditions: 1) Development of this site shall be in accordance with the final conceptual site plan prepared by Tidewater Homes and received by the Commission on April 16, 1998. Designation of of this property as a Buffer Exemption Area is applicable only to the Tidewater Homes project that has been presented as part of the Town's request of this amendment and that BEA designation is granted and shall be in effect only as long as the required MDE and Army Corps permits remain in full force and effect. Upon issuance of a stay or other action by a reviewing body of competent jurisdiction declaring your permit invalid and without further action by this Commission, BEA designation shall be revoked. 2) the developer shall work with Commission staff during the design phase of the building and site to further minimize the extent of intrusion into the BEA. Buffer mitigation shall be based on impervious surface area within the Buffer and expanded Buffer as shown on the final design plans. 3) The developer shall provide the following mitigation: a. The extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation; and , b. Natural vegetation of an area twice the extent of the impervious surface in the BEA must be created in the Buffer Exemption offset area or other location as determined by the local jurisdiction. The location of the mitigation planting shall be identified and approved by Commission staff prior to the Town's approval of the project. Insofar as possible, mitigation planting should be located on the project site. 4) Wetland areas of the site shall not be used for the treatment of stormwater quality however, the discharge of treated stormwater into the wetlands may be permitted. 5) The Town and MDE shall execute a binding and enforceable agreement regarding the operation of the tide gate in order to ensure that it will be operated in an environmentally sound manner. Commission Staff shall coordinate with MDE and the development and execution of the agreement. The motion was seconded by Larry Duket and carried unanimously.

The **State Highway Administration's** proposal to resurface MD 18A from MD 759B to Castle Marina Road, replacing the MD 18A bridge over Cox Creek and relocating MD 18A in **Queen Anne's County** was presented for VOTE by Mr. Greg Schanger, Planner, CBCAC. Mr. Schaner described the technical details of the project including impacts to the 100-foot Buffer and the associated mitigation for pervious surface displacement; habitat protection issues stating there are no threatened or endangered species in the project area , stormwater management issues wherein phosphorus reductions are not required due to the overall decrease in impervious surfaces in the areas of intense development and a relocation of a detention pond; and wetlands impacts and associated mitigation plans. This project is consistent with the County Critical Area Program. Final approval of the sediment and erosion control plans by MDE must be issued. Kay Langner moved to approve MD Rt 18A replacement project subject to staff recommendations. The motion was seconded by David Cooksey and carried

unanimously.

The State Highway Administration 's proposal to replace Bridge No. 9015 on MD 392 over Marshyhope Creek in **Dorchester County** was presented by Greg Schaner for Vote. The purpose of this project is to provide a safe transportation facility by replacing the existing deteriorating bridge on site. Mr. Schaner described the technical details of the project. There will be no new impervious surface within the Buffer, however a 4700 square foot area in the Buffer will be impacted. Mitigation for vegetative impacts is provided. There is a restriction period expanded for yellow perch. MDE indicated that the replacement qualifies for a stormwater management waiver due to the low level of impact. There is temporary impact to tidal wetlands, minimized by maintaining the current road alignment. A suitable mitigation site is being sought with the project area. The County has indicated that the project is consistent with its Critical Area Program as long as all habitat issues are addressed. Sediment and erosion control plans are in their final stages and approval is expected at the end of the month. Conditions for approval are that 1) a requirement that SHA provide mitigation funds to the Restoration Division in an amount that will allow them to plant 14, 100 square feet; 2) the time of year restriction for anadromous fish, 3) sediment and erosion control plans must be issued. Kay Langner moved to approve MD 392, Marshyhope Creek Bridge Replacement, subject to the recommendations of the Commission staff. The motion was seconded by Dave Cooksey and carried unanimously.

The Maryland Aviation Administration 's proposal for the development of a Midfield Hangar/Office Complex at Martin State Airport in **Baltimore County** was presented for VOTE by Susan McConville, Planner, CBCAC. Ms. McConville described the redevelopment design to be completed in two Phases. An overall disturbance area of 75 acres within the Critical Area is proposed. Phosphorus reduction requirement plans have been reviewed and approved. Mitigation for nontidal wetland impacts to be incurred by the proposed development under both phases has been designed and is proposed as part of Phase I. MDE is reviewing the plans for stormwater management and sediment and erosion control for final approval. Kay Langner moved for the Martin State Airport office complex as presented. The motion was seconded by Dave Cooksey and carried unanimously.

Ren Serey, Executive Director, CBCAC presented information for deliberations on **Wicomico County's** Critical Area original Program specifically the section that deals with "site specific" buffer variances. Mr. Serey stated that the County has been apprised that this section needed some work and that it could be accomplished during their comprehensive review. There has been no progress by the County on the comprehensive review for various reasons and additionally the County Code is at odds with the Program that both the Commission staff and County staff have been using regarding the standards that have to be met for a variance. A clerical error has complicated the language in the original program regarding standards that have to be met. After much discussion and debate on this issue among and between Commission members, Commission staff, Commission counsel, Wicomico County Planning Director, Kris Hughes, a motion was made by Dr. Sarah Taylor-Rogers that the Commission endorse the recommendation of Commission Counsel to invoke section 8-1809L; the motion was seconded by Louise Lawrence and carried; Larry Duket stood opposed; Will Castleberry abstained.

OLD BUSINESS

Marianne Mason, Esquire, Assistant Attorney General, DNR and Commission Counsel updated the Commission on legal affairs. She told the Commission that an opinion out of the Court of Special Appeals has been rendered last Thursday by Judge Harrell which involves a swimming pool in the Buffer. The opinion is no pool, no taking. The case had proceeded up from the Board of Appeals in Anne Arundel County, and then from the Circuit Court. This affirms the Commission position that the variance had been improperly granted by Anne Arundel County.

A Brief was filed in the Court of Special Appeals on the 30th of April in the Citrano Case, a deck in the Buffer and the argument is set on June 1st.

In Anne Arundel County a Memorandum of Law was filed in the Belvoir Farms Case on April 15th wherein the County issued a variance to increase the number of boat slips allowable at a landlocked subdivision.

In Dorchester County there has been action on four cases: first the Foxwell case, which was a pool in the Buffer, settled because the applicants requested the Board to withdraw their variance and the Commission agreed to drop its Appeal; an Appeal was filed in Dorchester in which the Board granted a variance for an addition to a shed in the Buffer and made no findings whatsoever; in the Davis case in Dorchester, the Court issued a Default Order against the Board of Appeals because they failed to defend their variance. The Davis' built the shed despite the Commissions' pending Appeal and there will be a hearing sometime this summer in that case. In Dorchester wherein the Court issued a Default Order when the other party did not appear regarding a gazebo and a judgement on that is expected this month because the applicants' appeal time is up.

There being no further business, the meeting adjourned.

Minutes submitted by Peggy Mickler, Commission Secretary.

K.L. Motion
D.B. Sec
Dr. For Amend *CM*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

June 3, 1998

APPLICANT: Calvert County Planning and Zoning
And the Calvert County Public Schools

PROPOSAL: Dowell Elementary School Facilities

JURISDICTION: Calvert County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Conditional Approval

STAFF: Dawnn McCleary

**APPLICABLE LAW/
REGULATION:** COMAR 27.02, Development in the Critical Area
Resulting from State and Local Agency Programs;
Chapter 06, Conditional Approval of State or Local
Agency Programs in the Critical Area; .01 Criteria

DISCUSSION:

Calvert County requests conditional approval of proposed grading, within the extended Buffer and clearing of over 30% of forest because the current site plan is not consistent with the Calvert County Critical Area Program. The proposed school site is designated Resource Conservation Area and is located adjacent to the Solomons Town Center just south of the Lusby Minor Town Center. The location of the proposed school is consistent with the County's Smart Growth initiatives.

The Dowell Elementary School site consists of 19 acres, with 7.09 acres of the 19 acre site within the Critical Area. The existing forest cover within the Critical Area is 3.58 acres, with 2.63 acres of clearing proposed (73%) within the Critical Area.

The purpose in grading in the extended Buffer and in clearing 73% of forest cover is to construct: 1) an asphalt play area, 2) a grass physical education field, 3) a retaining wall and 4) stormwater management device #2. The County is currently looking at moving the proposed stormwater management device #2 outside of the extended buffer. The Wildlife and Heritage Division of Maryland of Department Natural Resources has determined that the area does not qualify as FID bird habitat because it is located to the east of RT 765 and to the west of a SMECO utility line, which is presently cleared. There are no threatened or endangered species on the site.

Continued, Page Two
Dowell Elementary School
June 3, 1998

Commission staff has brought this project for the Commission's review and consideration under COMAR 27.02.06. Under the criteria of this chapter, if development is proposed to be undertaken or caused in the Critical Area by State or local agency actions and this development is prohibited from occurring by the Criteria, the agency proposing the development may seek conditional approval for the project or program from the Commission.

In order to qualify for consideration by the Commission for conditional approval, the proposing local agency must show that the project or program has the following characteristics:

1. That there exists special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;

The alternative site analysis indicated that this site was an appropriate place for the school. It is between the town centers of Solomons and Lusby and in an area of a large and growing number of school aged children. For an elementary school to function well it must meet a large number of criteria and provide certain services to the school and students. Large grassed playing fields and asphalt surfaces are necessary for physical education. Parking and building area requirements must be met. It was impossible to meet all the conditions that are required to make a school function well and not to exceed the Calvert County Critical Area Program criteria.

2. That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program;

The purpose of this project is to provide public education to the large and growing population of school aged children in the Lusby and Solomons areas. In addition, by locating the school close to this population center, transportation caused pollutants from buses and parent trips will be reduced and children will be in buses for shorter periods of time. Environmental education is another part of the elementary school curriculum and the reforestation could be part of a proposed school project.

3. That the project or program is otherwise in conformance with this subtitle.

Staff feels that other than the non-compliance listed above, the proposed development is consistent with the Calvert County Critical Area Program.

Continued, Page Three
Dowell Elementary School
June 3, 1998

The Commission must find that the conditional approval request contains the following:

1. A showing that the literal enforcement of the provision of this subtitle would prevent the conduct of an authorized State and local agency program or project;

The clearing of 73% forest cover and grading within the extended buffer are needed. In order for an elementary school to function, it must provide certain types of services to the school and students such as the construction of a large grassed physical education field, retaining wall, and asphalt play area. The school buildings, roads and parking lots all are located outside of the Critical Area.

2. A proposed process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05 and;

The proposed development activity within the extended Buffer is inconsistent with the County's Critical Area Program. However, mitigation will be provided for all Buffer impacts.

3. Measures proposed to mitigate any adverse effects of the project or program on an approval local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

The proposed mitigation is in three areas of reforestation within the Critical Area. The County is looking at planting shrubs in the SMECO utility easement and is seeking permission to do so. The County is also looking at a 10 acre site of forest planted at Warrior's Rest on Parkers Creek. as mitigation.

The Conditional Approval request is consistent with the Commission's regulations for Conditional Approval of State or Local Agency Programs in the Critical Area. (COMAR 27.02.06)

Concurrence

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

June 3, 1998

APPLICANT: Calvert County P & Z

PROPOSAL: Mapping Mistake to correct Critical Area Line
For the Dowell Elementary School/Lore Property

JURISDICTION: Calvert County

COMMISSION ACTION: Review for Concurrence

STAFF RECOMMENDATION: Concurrence with Chairman's determination

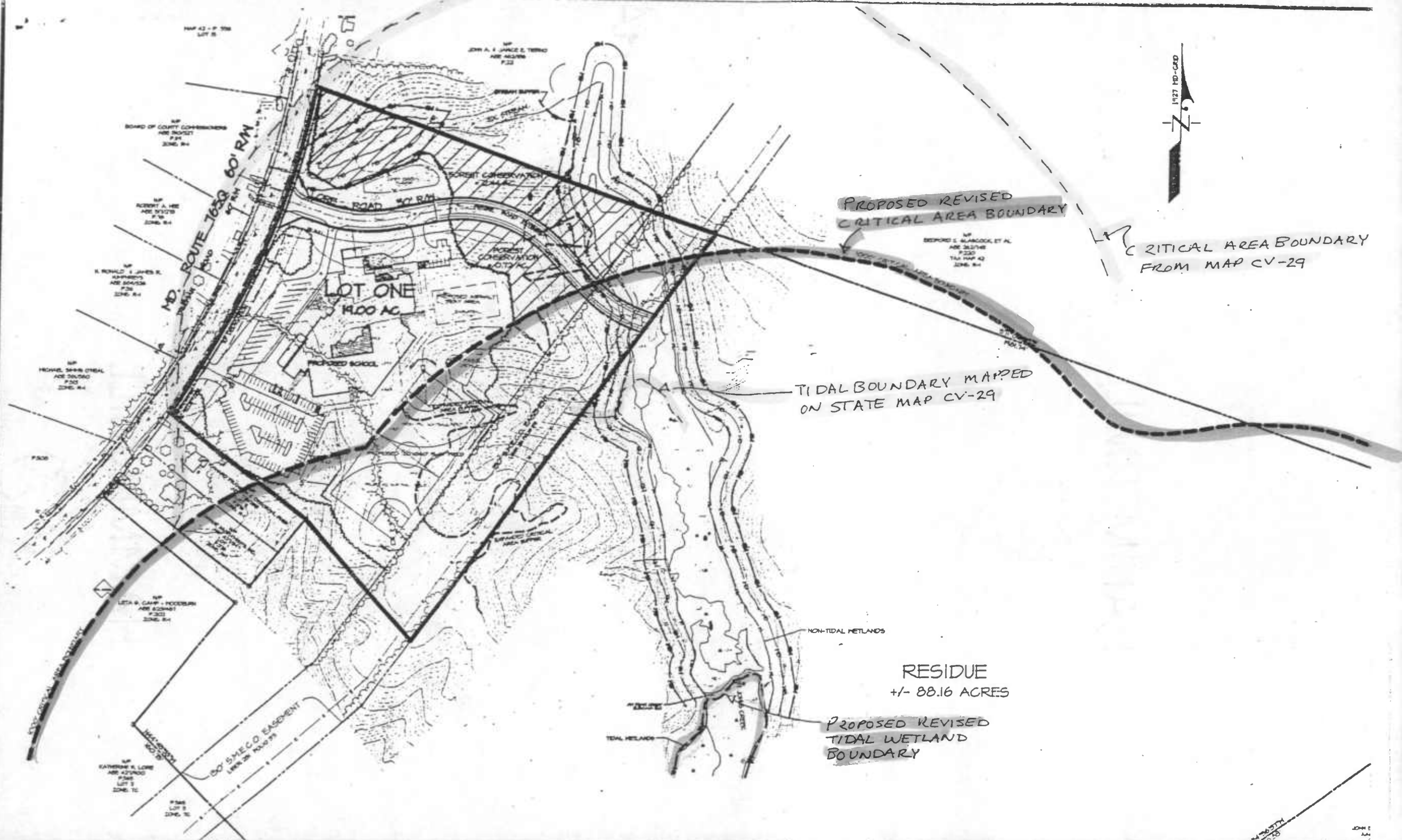
STAFF: Dawnn McCleary

**APPLICABLE LAW/
REGULATION:** Natural Resources Article 8-1802 and
8-1807

DISCUSSION:

Calvert County is requesting that the Maryland Department of the Environment (MDE) revise and re-promulgate State Tidal Wetlands Boundary Map #CV-29 to correct an error in the mapping of tidal wetlands on the Lore Property. This property completely encompasses the branch of St. John Creek which is being proposed for remapping. Also, this correction would remove an area of approximately 11.91 acres of the school site from the Chesapeake Bay Critical Area. MDE has moved the line, as indicated on the attached map, in order to reflect more accurately the existing tidal conditions. The MDE process included site review, and public notice.

The 11.91 acres to be removed from the Critical Area are designated Resource Conservation Area. The County's growth allocation will be reduced by 0.59 acres.



K.L. - motion to approve
Saul T.R. - as proposed

JK

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

June 3, 1998

APPLICANT: The Department of Transportation: Maryland Port Administration

PROPOSAL: Cargo Shed Extension at South Locust Point Marine Terminal

JURISDICTION: Baltimore City

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Dawnn McCleary

APPLICABLE LAW/REGULATIONS: Chapter 5: State Agency Actions Resulting in Development on State-Owned Land COMAR 27.02.05.02

DISCUSSION:

The proposed cargo shed extension is located in the southeast sector of Baltimore City at the Maryland Port Administration South Locust Point Marine Terminal. The proposed project consists of the construction of an extension of an existing cargo shed. The extension will be approximately 100,000 square feet. The project lies entirely within the Critical Area with a small portion lying within the 100-foot Buffer. The site has been classified as a redevelopment in an Intensely Developed Area (IDA).

The site of the proposed cargo shed extension currently exists as a bituminous surface used as a storage area for container vehicles and is crossed by a variety of utilities. The Maryland Port Administration proposes to relocate the utilities around the proposed extension and to construct the pile supported building over a structural fill on top of the bituminous paving. The 10% calculations were done and, as a Best Management Practice, a dry extended detention pond was recommended. The scheduled start of the construction is April 1998, with completion planned for April 1999.

K.L. Motion to
Approve
as pref.
R.B. sec

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

June 3, 1998

APPLICANT:	Historic St. Mary's City Commission	c/n
PROPOSAL:	Reconstruction of Smith's Ordinary	
JURISDICTION:	St. Mary's County	
COMMISSION ACTION:	Vote	
STAFF RECOMMENDATION:	Approval	
STAFF:	Tracy Batchelder/Mary Owens	
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands	

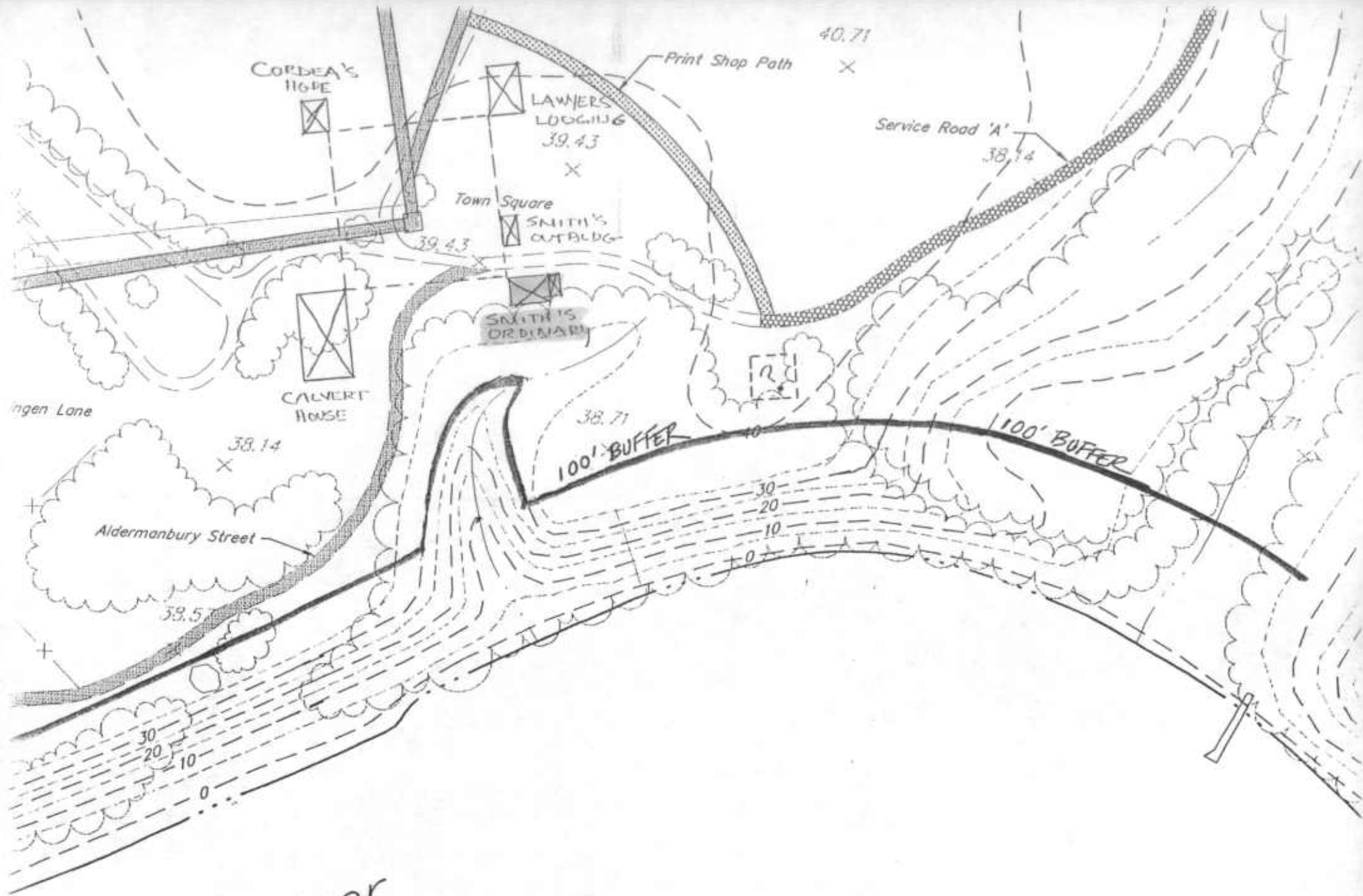
DISCUSSION:

The Historic St. Mary's City Commission is proposing to reconstruct Smith's Ordinary as part of Historic St. Mary's City in St. Mary's County. The reconstruction of Smith's Ordinary is based on recommendations made within the Historic St. Mary's City Master Plan Update which was approved by the Critical Area Commission in 1992.

Smith's Ordinary is the dominant structure on Smith's Townland, the area which helped to define the center of the community in Historic St. Mary's City. The building will be reconstructed so it appears to be crafted by 17th-century construction techniques. Smith's Ordinary will be a wooden 20' x 30' structure.

The proposed site for the structure is located outside of the expanded Buffer. The location is a relatively flat, grassy area with an adjacent farm road. No vegetation will be removed for construction of the structure and, due to the archaeological sensitivity of the site, every effort will be made to minimize disturbance to the area. Due to the small size of the structure and well-drained soils, stormwater management will be addressed by maintaining the large grassy areas around the structure as an infiltration area. The site is characterized by Sassafras sandy loam soils which are generally suitable for infiltration.

There are no wetlands, threatened and endangered species or other sensitive areas on the proposed reconstruction site. No MDE permits are required for the project as less than 5,000 square feet will be disturbed by the construction and location of the structure.



St. Mary's River

K.L. sec. as prop
O.B. 2

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

June 3, 1998

C/L

APPLICANT: Historic St. Mary's City Commission

PROPOSAL: Construction of Restroom Building

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Tracy Batchelder/Mary Owens

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Actions Resulting in
Development on State-Owned Lands

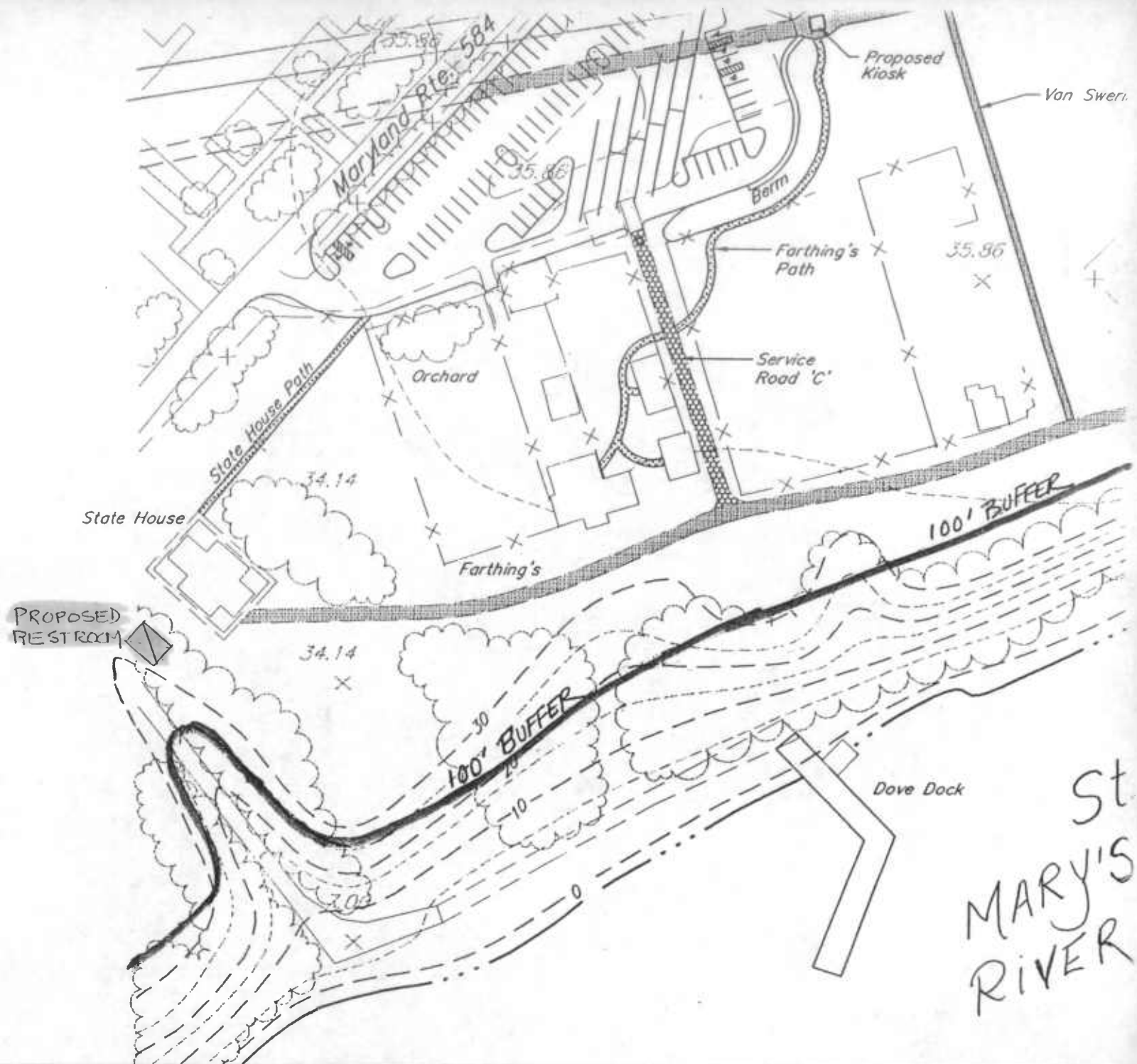
DISCUSSION:

The Historic St. Mary's City Commission plans to erect a new restroom building near the existing State House to improve access (including ADA accessibility), safety and amenities for visitors and guests. The proposed building is 30' x 18½', constructed in brick to appear as a 17th-century structure on the exterior.

The proposed site for the restroom is located outside of the expanded Buffer near the existing State House. The restroom will be connected to the State House by a 4-foot wide brick walkway. It will be necessary to take out a few small cedar trees to accommodate the building, but 1:1 mitigation will be provided in an area near the proposed restroom. Care will be taken not to disturb the major roots of nearby trees during the construction of the restroom building.

The site is characterized by Sassafras sandy loam soils which are generally suitable for infiltration. However, due to an adjacent paved road running downhill towards St. Mary's River, nearby existing development, and pedestrian traffic in that area, stormwater management is recommended for the proposed restroom facility. At this time, the Historic St. Mary's City Commission is considering two options to meet the stormwater management requirements: a French Drain or a Dry Well. Either option would meet the stormwater requirements given the size of the proposed restroom building.

There are no wetlands, threatened and endangered species or other sensitive areas on the proposed construction site. No MDE permits are required for the project as less than 5,000 square feet will be disturbed by the construction and location of the structure.



Chesapeake Bay Critical Area Commission
North East Yacht Club
North East, Maryland

June 3, 1998

approved

The Chesapeake Bay Critical Area Commission met at the North East Yacht Club in North East, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Blake, Russell, Worcester County
Bourdon, Dave, Calvert County
Myers, Andrew, Caroline County
Corkran, William, Talbot County
Goodman, Robert, DHCD
Williams, Roger, Kent Co.
Langner, Kathryn, Cecil Co.
Giese, William, Jr., Dorchester Co.
Duket, Larry F., Office of Planning
Johnson, Samuel Q., Wicomico Co.

Pinto, Robert, Somerset County
Hearn, J.L., Md. Dept. Of Environ.
Rogers, Dr. Sarah Taylor-DNR
Dr. Foor, James C., Queen Anne's County
Barker, Philip, Harford County
Appel, Sherry for Wynkoop, Samuel,
Prince George's County
Robinson, Edward, Kent County/Eastern Shore MAL

The Minutes of May 6, 1998 were approved as read.

Chairman North introduced Mr. Joseph Jackson, of Pocomoke City, Maryland, successor to Russell Blake, the Commission's newest member. A Commission Certificate of Appreciation was presented to Mr. Blake and to Ms. Kay Langner, also retiring from her position on the Commission.

Ms. Melissa Cooke-McKensie, Town Administrator for the Town of North East gave welcoming remarks and updated the Commission on the work that has been done on shore erosion and the Community park within the town.

Calvert County's request to the Maryland Department of the Environment to revise and re-promulgate State Tidal Wetlands Boundary Map #CV-29 was presented by Dawnn McCleary, Planner, CBCAC for Concurrence with the Chairman's determination of Refinement. This revision is to correct an error in the mapping of tidal wetlands (the Lore Property/Dowell Elementary School site) which will remove an area from the Chesapeake Bay Critical Area designated RCA. The acreage to be removed is 11.91 and would reduce by 0.59 acres the County's growth allocation. The Commission supported the Chairman's determination of refinement.

Calvert County's Department of Planning and Zoning and the Calvert County Public School system's request for conditional approval of grading and clearing within the extended Buffer for the construction of facilities for the proposed Dowell Elementary school project designated RCA was presented by Dawnn McCleary. The location of the proposed school is consistent with the County's Smart Growth initiatives. The Dowell Elementary School site consists of 19 acres, with 7.09 acres of the 19 acre site within the Critical Area. Clearing is proposed for 2.63 acres (73%) within the Critical Area; the existing forest cover within the Critical Area is 3.58 acres. There is a proposed stormwater management device to be moved outside the extended Buffer; there are no threatened or endangered species on the site and this site does not qualify as FID bird habitat. In order to qualify for consideration by the Commission for conditional approval it must be shown

that the project or program has certain characteristics, e.g., special circumstances, substantial public benefits to the Critical Area Program, and is in conformance with the local program; also, it must contain certain elements of enforcement of other Critical Area provisions, and mitigation of impacts, which Ms. McCleary outlined. The proposing jurisdiction has shown that this project meets those requirements. MDE has approved the mapping mistake correction which removes most of the site from the Critical Area (see above). Kay Langner moved for conditional approval of the Dowell Elementary School project subject to removal of proposed pond #2 from the extended Buffer and piping of stormwater to pond #3. The motion was seconded by Dave Bourdon. Dr. Floor moved to amend the motion to include "that the conditions are met". Both the movant and the seconder agreed to the amendment. The motion was carried unanimously.

The Maryland Port Authority's proposed cargo shed extension was presented by Dawnn McCleary for Vote. She said that this project, approximately 100,000 square feet, lies entirely within the Critical Area with a small portion lying with the 100-foot Buffer. This is a redevelopment in an Area of Intense Development (the Critical Area designation for state lands with IDA characteristics). The proposal is to relocate the utilities around the proposed extension and to construct the pile supported building over a structural fill on top of the bituminous paving. The 10% calculations were done and, as a Best Management Practice, a dry extended detention pond was recommended. Kay Langner moved for approval of the MPA cargo shed extension at South Locust Point Marine Terminal. The motion was seconded by Dr. Sarah Taylor-Rogers and carried unanimously.

Historic St. Mary's City's Commission's request to reconstruct Smith's Ordinary was presented by Tracy Batchelder, Planner, CBCAC for Vote. This reconstruction is based on recommendations made by the Historic St. Mary's City Master Plan Update which was approved by the Critical Area Commission in 1992. Smith's Ordinary will be a wooden 20' x 30' structure reconstructed so it appears to be crafted with 17th century construction techniques. The proposed site is outside the expanded Buffer. No vegetation will be removed and stormwater management will be addressed by maintaining the large grassy areas around the structure as an infiltration area. There are no wetlands, threatened and endangered species or other sensitive areas on the proposed reconstruction site. Kay Langner moved for approval of the Historic St. Mary's City reconstruction of Smith's Ordinary as proposed. The motion was seconded by Russell Blake and carried unanimously.

Historic St. Mary's City's Commission's request to erect a new restroom building near the existing State House was presented by Tracy Batchelder for Vote. This new building will improve safety, amenities for visitors, including ADA accessibility. The proposed building is 30' x 18 1/2' constructed in brick to appear as a 17th century structure on the exterior. The site is located outside of the expanded Buffer. Ms. Batchelder described the technical details of the construction. There will be 1:1 mitigation for the removal of any trees. There are no wetlands, threatened and endangered species or other sensitive areas on the proposed construction site. A Dry Well will be constructed to meet the stormwater requirements. A sewage connection will be made to St. Mary's College. Kay Langner moved for approval of the Historic St. Mary's City's construction of a new restroom building as proposed. The motion was seconded by Dave Bourdon and carried unanimously.

OLD BUSINESS

Marianne Mason, Esquire, Assistant Attorney General and Commission Counsel, updated the Commission on legal matters. She said that testimony was presented at an administrative appeal of a variance in Talbot County and the Board has not yet made a decision. The variance was for a brick walkway in the Buffer. This case last summer went to Circuit Court and the Court remanded it to the Board of Appeals in Talbot County for another hearing. A decision is expected mid to late summer.

In Dorchester County, the Circuit Court has signed an order dismissing a case in which the Critical Area Commission had appealed the grant of a variance for a swimming pool. The court dismissed the case on the Commission's motion because the applicants withdrew their request for the variance. They essentially gave up their variance for the pool.

In the Court of Special Appeals, the case of Citrano vs. North was argued. This case was a deck in the Buffer that has been going on for a couple of years. The applicants have lost every step of the way. The Commission briefed the case and argued it on Monday. Ms. Mason stated that she believes that the Commission will win this round as well.

NEW BUSINESS

There being no further business, the meeting adjourned.

Minutes submitted by Peggy Mickler, Commission Secretary.

Chesapeake Bay Critical Area Commission

STAFF REPORT

June 3, 1998

APPLICANT: State Highway Administration

PROPOSAL: MD 213 Bridge over Big Elk Creek

JURISDICTION: Town of Elkton

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with condition that approval is received under the Joint Permit.

STAFF: Susan McConville

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05.03

DISCUSSION

The State Highway Administration (SHA) is proposing to rehabilitate and widen Bridge No. 7052, MD 213 over Big Elk Creek in Elkton. The existing concrete girder bridge, built in 1932, carries three lanes of traffic and is 38 feet wide and 122 feet long, consisting of three 40-foot wide spans with two piers in the creek. The existing bridge superstructure and piers will be completely removed under this project. The existing abutments are in good condition and will be utilized in the construction of the new bridge.

The proposed rehabilitated bridge will be a two span steel girder bridge 122 feet long and 53 feet wide providing for the current three lanes of traffic. The center northbound through lane will be 12 feet wide, the outside southbound through lane and right turn lane will be 11 feet wide accompanied with three foot wide shoulders allowing for bicycle traffic. A five-foot sidewalk will be provided for pedestrian traffic on both sides of the roadway. The bridge will remain on the present MD 213 alignment and profile, thus utilizing the existing abutments with a 15-foot widening to the east of the existing structure. Limited approach roadway work will be required at both ends of the new bridge to tie into the new bridge. Two lanes of traffic will be maintained in each direction during the removal of the existing bridge and the construction of the new bridge resulting in three stages of construction. All embankment material will be contained through the use of extended wingwalls and parapet walls. (See attachment 1)

The entire project lies within the Critical Area. The land is designated as IDA on both approaches to the bridge, with an adjacent area of RCA. (See attachment 2) The bridge crosses over Big Elk Creek, which flows from north to south into Elk Creek. Big Elk Creek is classified as Use I waters (Recreational waters) by MDE. In-stream construction for Use I waters is prohibited from February

15 through June 15, inclusive.

MD- DNR, Environmental Review has determined that yellow and white perch occur in the vicinity of the bridge. These perch will be protected by the above referenced time of year restrictions. The Wildlife and Heritage Division of DNR have indicated there are no records for the presence of Federal or State rare, threatened or endangered species.

The U.S. Fish and Wildlife Service indicates that bog turtles may be present in the project area. The wetland delineation which was prepared for the project did not indicate the presence of palustrine emergent wetland. In the project area, therefore, the presence of bog turtles are not likely to occur. MD DNR Wildlife and Heritage Division indicates that there are no state listed threatened or endangered species in the project area.

Heavy construction equipment required for the project will result in disturbance to areas adjacent to the bridge. All adjacent disturbed areas will be restored to pre-construction conditions or better when the project is complete. No wetlands or SAV were identified within the project limits. The project will impact 180 linear feet of tidal water. SHA is in the process of identifying a site for mitigation. SHA will provide a mitigation proposal for review.

Approximately 13 trees will be impacted within the 100-foot tidal Buffer within the Critical Area. The trees will be mitigated at the 3:1 ratio on a site in Elkton on land owned by the town in the Buffer to Little Elk Creek. A detailed landscape plan is being developed to mitigate the trees and will be presented for review.

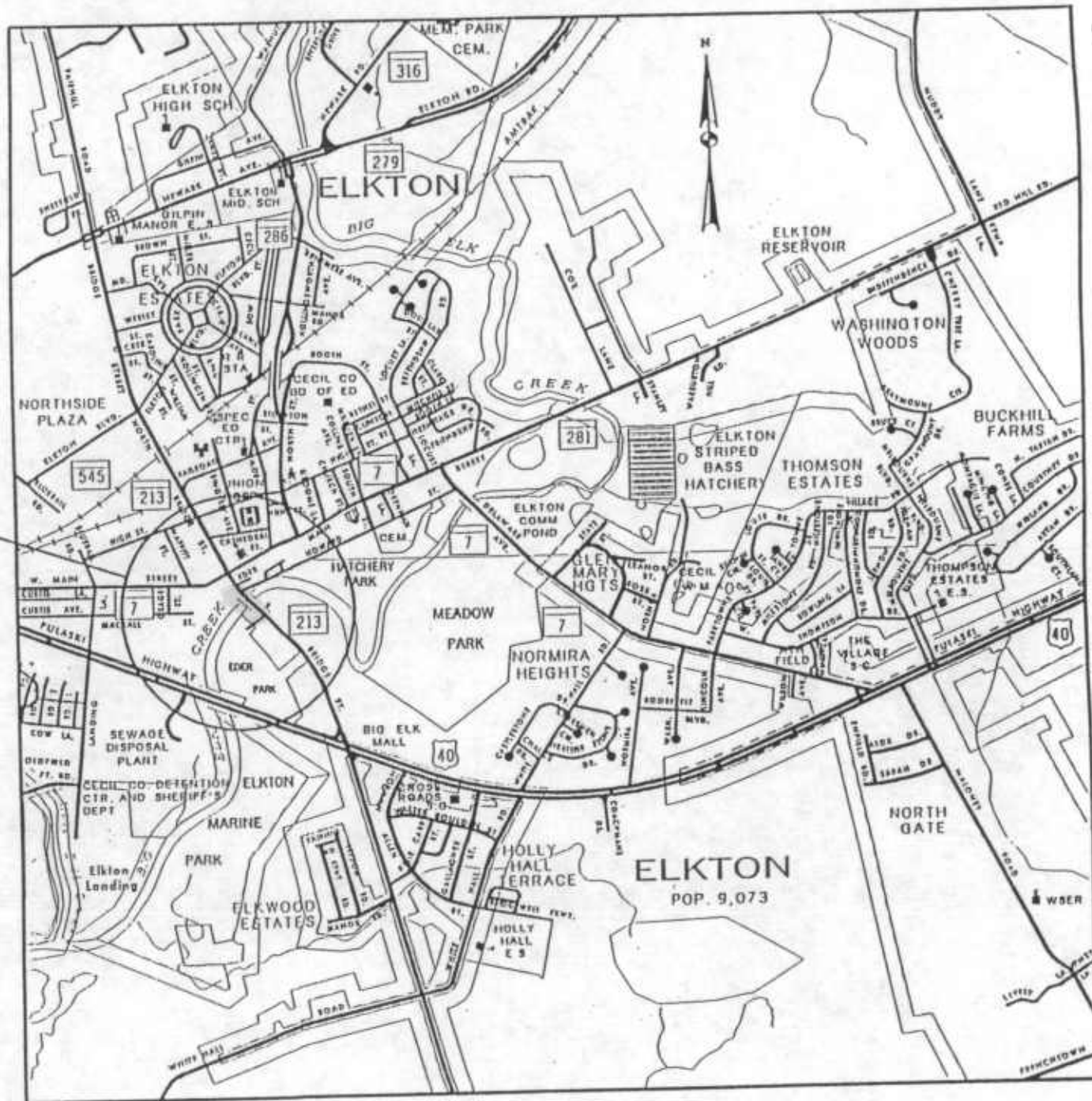
SHA has received a letter of exemption from MDE for stormwater management and erosion and sediment control due to the fact that the proposed project involves less than 5,000 square feet of ground disturbance and less than 100 cubic yards of earthwork. MDE and the Army Corps of Engineers are currently reviewing the project for approval of the proposed waterway construction for instream work. The project is currently being reviewed under the Joint Permit. We expect comments from MDE and the US Army Corps of Engineers by the June meeting.

The proposed project will add 0.08 acres of impervious surface in the Critical Area. Because 0.03 acres of the additional impervious surface consists of widening the bridge over open water, the effective impervious surface added to the Critical Area is 0.05 acres. Approximately 0.03 acres are in the IDA portion and 0.02 acres are in the RCA portion.

In order to meet the Critical Area requirements for water quality, a vegetative swale will be placed on the site from Station 50+50 right to Station 51+55 right (See attachment # 3). This swale will treat onsite and offsite impervious area totaling 0.36 acres. Placement of this swale also involves removing slabs of concrete alongside the road that appear to be part of an old bridge. Although this removal of impervious surface will reduce the net addition of impervious surface to the project, it has not been factored in. The vegetative swale will provide removal of 0.62 pounds of Phosphorus per year, exceeding the 10% phosphorus reduction requirement of 0.37 pounds per year.

The Town of Elkton has reviewed the proposed project and has written a letter in support of the bridge replacement and are working with SHA on the tree planting agreement on Town land.

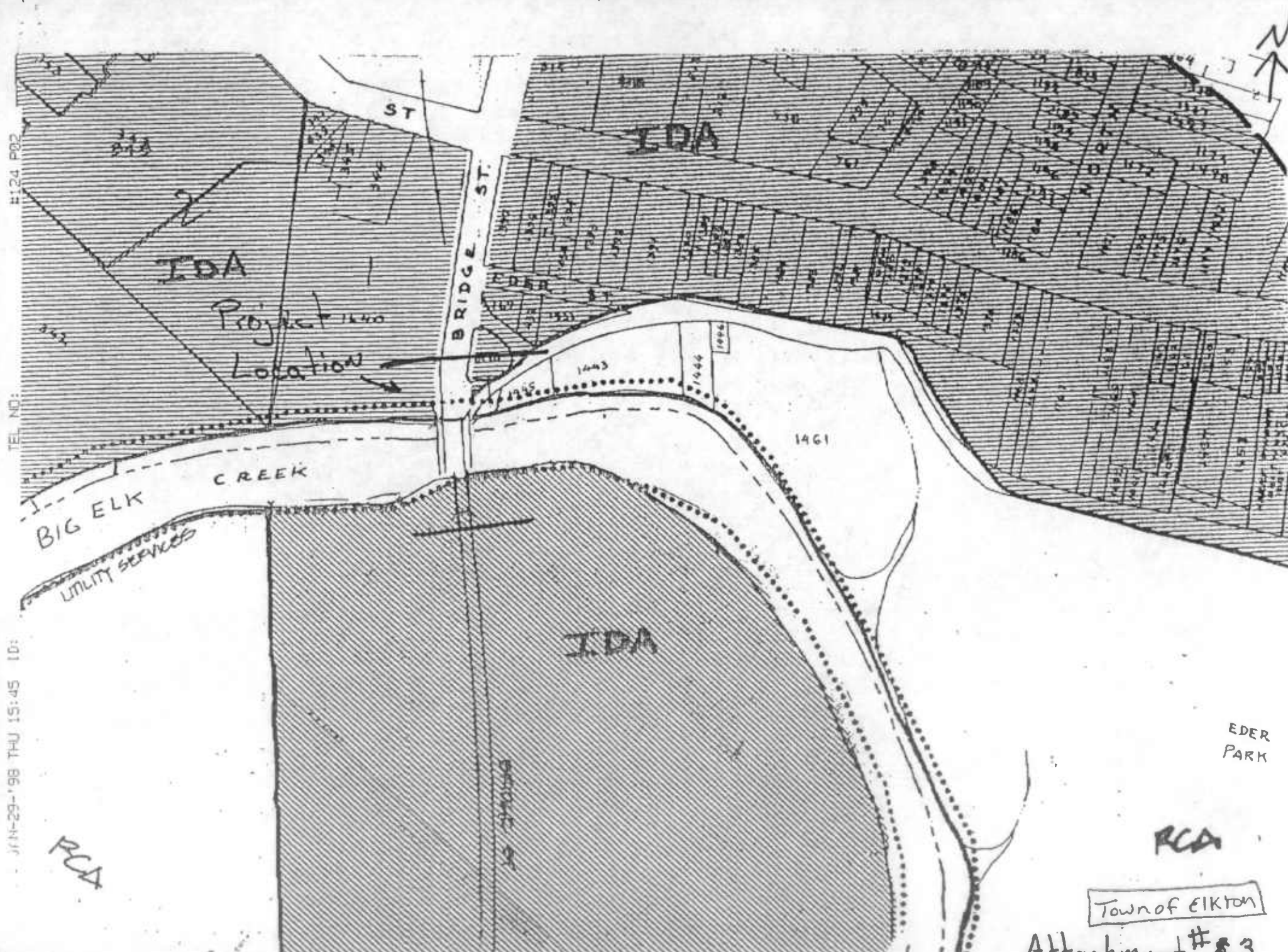
BRIDGE NO. 7052
MD 213 OVER
BIG ELK CREEK



STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
OFFICE OF BRIDGE DEVELOPMENT
REHABILITATION OF BRIDGE NO. 7052
ON MARYLAND 213
OVER BIG ELK CREEK
PERMIT APPLICATION

SHEET NO. 1 OF 15

LOCATION MAP
SCALE: 1" = 2000'



Chesapeake Bay Critical Area Commission

STAFF REPORT

JUNE 3, 1998

PROPOSAL:

Large-scale assisted living facility in the RCA

JURISDICTION:

Anne Arundel County

COMMISSION ACTION:

Pending Subcommittee Recommendation

STAFF RECOMMENDATION:

Notify Anne Arundel County that Growth Allocation must be deducted for the Forest Glen Assisted Living Facility

STAFF:

Ren Serey
Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:**

COMAR 27.01.02.05 C (4) and (5)
COMAR 27.01.02.06
NR Article 8-1809

DISCUSSION:

Introduction:

The Commission completed its comprehensive review of the Anne Arundel County Critical Area Program in 1993. For two years prior to that action, the Commission worked closely with County officials and the locally-appointed citizens' Critical Area Task Force to resolve numerous issues of interpretation and to ensure consistency with the Critical Area Act and Criteria. The current round of comprehensive review discussions with the County is underway and recommendations soon will be presented to the panel for discussion. However, the issue of permitted uses in the Resource Conservation Area (RCA), left unresolved from the 1993 comprehensive review, requires Commission attention.

As the Commission has examined each county's Critical Area program, staff and Commission members have worked cooperatively with the jurisdictions to determine which uses allowed in underlying zones are compatible with the resource protection and habitat conservation provisions of the RCA. In other county programs, this review process has resulted in a table or list which specifies uses that are consistent with the Criteria provisions for the RCA, and those which would require growth allocation for new development activities. During the 1993 comprehensive review of the Anne Arundel County program, the Commission and the County were unable to resolve disagreements over the Commission's authority to determine appropriate uses and therefore the County did not prepare, and the Commission did not approve, a table of permitted RCA uses.

This situation has presented no problems in the interim. Only one project has been proposed in the RCA (a driving range and associated office and store) which the Commission staff believed was not consistent with the Criteria. The County staff agreed and both agencies opposed the use, which was denied a Special Exception by the County Administrative Hearing Officer on, among other grounds, inconsistency with RCA characteristics. Recently, however, another project was proposed, which the Commission staff believes requires growth allocation. The County staff disagrees. Our letters to the County and the County's response are attached.

The Current Proposal

The current proposal is to allow an assisted living facility in the RCA. The underlying zoning is R-2, a Residential District. In the County Zoning Ordinance, Section 10-122(a)(3) defines an assisted living facility as a residential facility with at least four and not more than 15 individuals. The proposed Forest Glen Assisted Living Facility will house 15. An examination of the grading plans reveals a building with a footprint of 8,000 square feet, a 13-car parking lot which includes a loop, a 1500 gallon septic system, and associated stormwater management facilities, on a 3.49 acre site. Total disturbance resulting from the development will be 1.52 acres.

Commission staff believes that for the following reasons Anne Arundel County should use growth allocation to permit development of this assisted living facility:

- * The facility will have a significant impact on this RCA site, as evidenced by the 8,000 square foot building, septic system and parking lot.
- * Although the County classifies an assisted living facility as a residential use, it also is commercial in nature.

The Criteria prohibit new commercial development activities in the RCA, but the Commission's policy, outlined below, has been to allow certain commercial uses without growth allocation if they cause minimal impact to Critical Area resources. Often, the size of a structure, or the amount of physical disturbance to the landscape, is the deciding factor in this regard. As an example, staff believes that another type of group home regulated by Anne Arundel County is consistent with the Critical Area Criteria for the RCA and would not require growth allocation. This use is classified as a family care facility for aged or disabled persons or those in need of supervision. The facility provides resident services in a private residence to no more than six people and, although a commercial use, does not appear to present any adverse impacts to the RCA because of its limited size and location in a private dwelling.

The Commission's Policy on Uses in the RCA

In 1993, prior to the comprehensive review of Anne Arundel County's program, the Commission approved a policy concerning uses in the RCA (attached). The Commission specified that this policy was to be used during the required comprehensive review of local programs to help determine when growth allocation would be required for new development in the RCA.

In formulating the policy, the Commission recognized that local governments often use the same terms to describe permitted land uses while the actual impact of these uses varies from one jurisdiction to another depending on local zoning restrictions. The Commission believed that it could better accommodate these local differences by working individually with each jurisdiction rather than by developing a universal table of permitted RCA uses, which might unnecessarily restrict landowners and local governments.

An example of this policy is found in the local regulation of home occupations, such as tax preparation services, hair styling businesses or certain health care services. The Criteria prohibit new commercial uses in the RCA. However, home occupations, although commercial in nature, are incidental to the primary residential use and generally have little or no impact on the RCA. The Commission's policy allows it to review each jurisdiction's regulations for home occupations and decide whether growth allocation is needed. In all local ordinances examined under this process during the comprehensive reviews, the local regulations have been found sufficient to ensure that the characteristics of the RCA remain unaffected by home occupations and growth allocation has not been necessary.

The County's Position

Anne Arundel County never accepted the Commission's position that certain new development, when permitted by existing underlying zoning, could be considered inconsistent with the RCA Criteria and therefore would require the use of growth allocation. The County maintains that:

- 1) any use permitted by an underlying zoning designation in the RCA can be developed without growth allocation; e.g., if a commercial zone underlies the Critical Area RCA designation, a vacant property in the zone can be developed with a commercial use without the need to deduct growth allocation; and,
- 2) as long as new development satisfies underlying zoning requirements, it automatically satisfies the Critical Area Criteria.

The Commission has consistently held that the County's position is incorrect, and that while existing uses are grandfathered in the RCA, existing zoning is not.

Anne Arundel County implements its Critical Area program through an overlay mechanism. The Critical Area regulations for the IDA, LDA and RCA are applied in addition to (that is, they overlay) development regulations for the underlying residential, commercial, industrial or other zones. All jurisdictions employ an overlay system for the Critical Area except Kent and Talbot Counties.

During the 1993 comprehensive review, the Commission and the County were unable to work out a mutually acceptable means of dealing with issues of potential incompatibility between uses allowed in underlying zones and requirements of the Critical Area overlay designations. As stated above, the inability to resolve this situation in 1993 has not been an issue of concern until the assisted living facility was proposed. Negotiations with other jurisdictions concerning RCA uses have focused on the appropriateness of specific uses in the RCA, not on the fundamental principle of grandfathered uses vs. grandfathered zoning. No other jurisdiction interprets the Criteria regarding uses in the RCA like Anne Arundel County.

Provisions for development in the Resource Conservation Area are set out in the Criteria at COMAR 27.01.02.05 (4) and (5):

(4) Land within the resource conservation area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provision, and/or additional means to maintain the land area necessary to support the protective uses.

(5) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in section C(4) above, shall be allowed in resource conservation areas. Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below. (Section .06 covers growth allocation.)

Staff Recommendations

1. Regarding the Forest Glen Assisted Living Facility:

Staff recommends that the Commission notify Anne Arundel County that it must deduct 3.49 acres of growth allocation (the size of the existing parcel) if the County approves development of the Forest Glen Assisted Living Facility in the RCA.

2. Regarding future review of uses in the RCA:

Staff recommends that the Commission direct the County during the comprehensive review of its Critical Area program, to develop a table, list or other means by which the Commission can determine which uses permitted by underlying zoning, and located within the RCA, will require growth allocation.

Attachments:

Letter from Commission staff to Anne Arundel County
Letter from Anne Arundel County to Commission staff
Forest Glen Assisted Living Facility site plan
Anne Arundel County Critical Area map
Commission policy on uses in the RCA
Section from Queen Anne's County Critical Area Program

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 974-2426 Fax: (410) 974-5338

April 15, 1998

Mr. Mark Wedemeyer
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6303
Annapolis, Maryland 21401

Re: Forest Glen Assisted Living Facility

Dear Mr. Wedemeyer:

This office has reviewed the administrative plat and grading permit plans for the above referenced project and has determined that it is not an appropriate use in the Resource Conservation Area (RCA). This determination is based on the size and scale of this proposal, and the County's definition of assisted living facilities found in the Zoning Code at §10-122.

The immediate request is for a 8,000 square foot building, a 13 car parking lot, driveway, and associated stormwater management measures. The County Code allows up to fifteen persons at an assisted living facility. The level of intensity of this use does not appear to be consistent with the character of the RCA. The Critical Area Criteria in COMAR 27.01.02.05 characterize the RCA as a "nature-dominated environment". While residential uses are allowed in the RCA, the proposed assisted living facility seems likely to involve greater environmental impacts than those normally associated with residential uses.

The Code describes another level of group homes that may be appropriate in the RCA. Article 10-122(a)(1) defines a family care facility which allows no more than six individuals. This type of facility, appropriately sized, would be considered a use consistent with the RCA since it limits its level of activity by limiting the number of people.

The County should not issue the grading permit that is currently pending for this project. The applicant should be encouraged to either scale down the proposal so that it is consistent with the RCA overlay, or to apply for growth allocation.

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

Mr. Wedemeyer
Page Two
April 15, 1998

Finally, it is unclear from the signed plat when this parcel was illegally subdivided. If the parcel was subdivided since the adoption of the County's Critical Area Program, there may be an RCA density issue.

Thank you for your attention to this matter. If you have any questions, please call me at (410) 974-2426.

Sincerely,

A handwritten signature in cursive script, reading "Lisa A. Hoerger".

Lisa A. Hoerger
Environmental Specialist

cc: Michael Murray, PACE
Kevin Reigert, Assistant to Delegate Schade
AA 184-98



ANNE
ARUNDEL
COUNTY,
MARYLAND

N/F

2664 RIVA ROAD, P.O. Box 6675
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

May 7, 1998

State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, MD 21401

Attention: Ms. Lisa Hoerger
Environmental Specialist

Re: Forest Glen Assisted Living Facility
Grading Permit No. G02005178

Dear Ms. Hoerger:

This letter is in response to correspondence from your office dated April 15, 1998 regarding the above referenced grading permit. Your letter indicated that the Commission has determined, from their viewpoint, that the subject project is not an appropriate use in the Resource Conservation Area (RCA). You further stated that this determination was based on the size and scale of the proposal and the County Zoning Code definition of assisted living facilities.

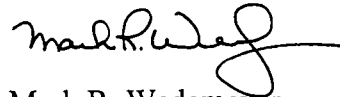
The subject property is zoned as a R2-Residential District with a RCA overlay. The use proposed for this project is allowed as per the Anne Arundel County Code, Article 28, section 2-402. While the County does recognize the Commission as a review agency, we do not view the role of the Commission as one to dictate what uses are permitted within the County Zoning Code. Our Code does not grant us the flexibility to choose, from project to project, what uses may or may not be allowed within a given zoning district. Furthermore, your comment to apply for growth allocation for the project, as currently proposed, is not applicable to this project. The facility is defined as a residence within a residentially zoned district and, therefore, does not meet the requirements for a growth allocation request.

Based upon the above information, the subject permit and associated use will be allowed to proceed through the review and approval process. All critical area clearing and impervious area provisions will be reviewed for compliance prior to approval.



If I may be of any further assistance, please do not hesitate to call me at (410) 222-7458 at your earliest convenience.

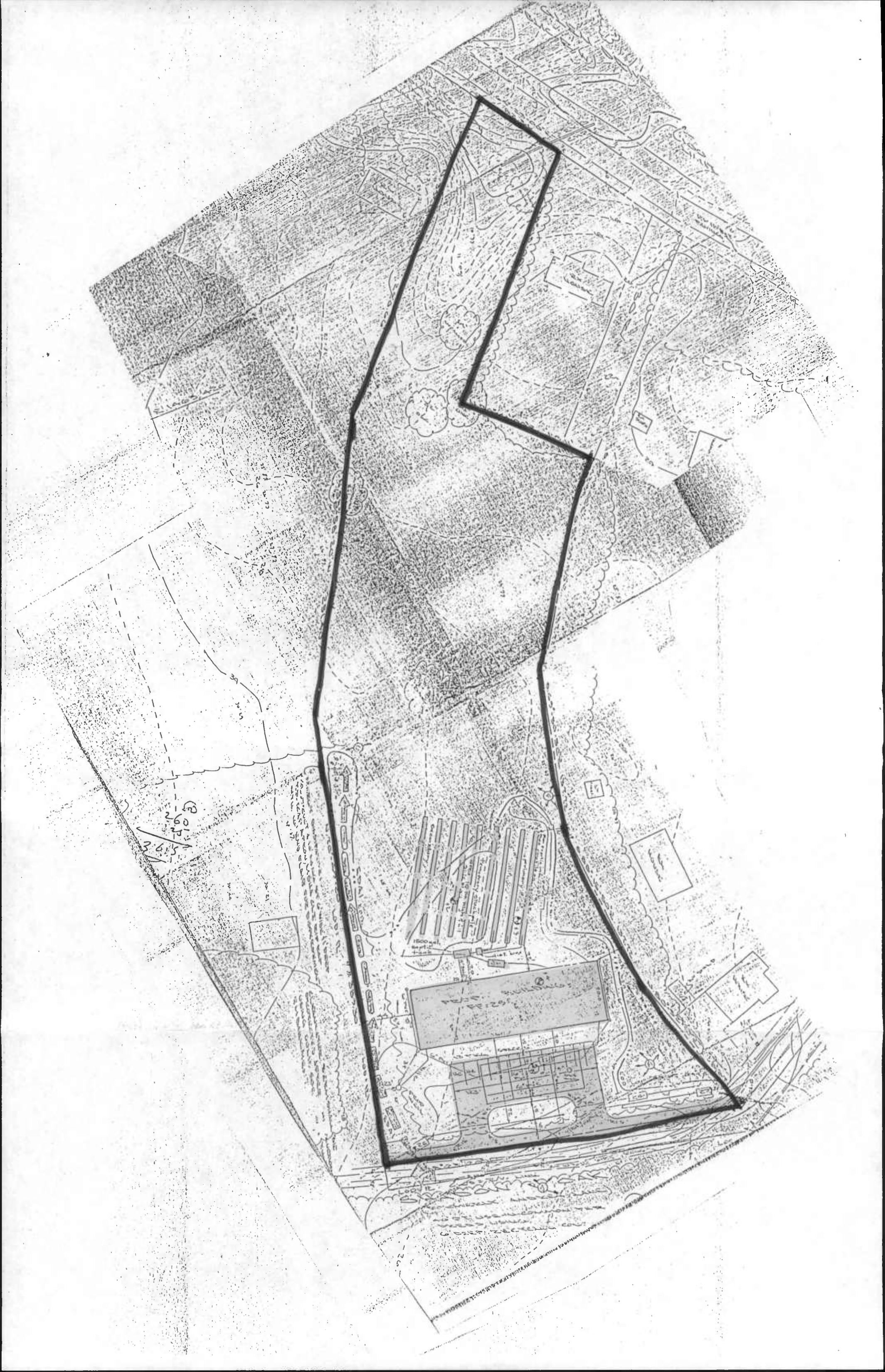
Sincerely,

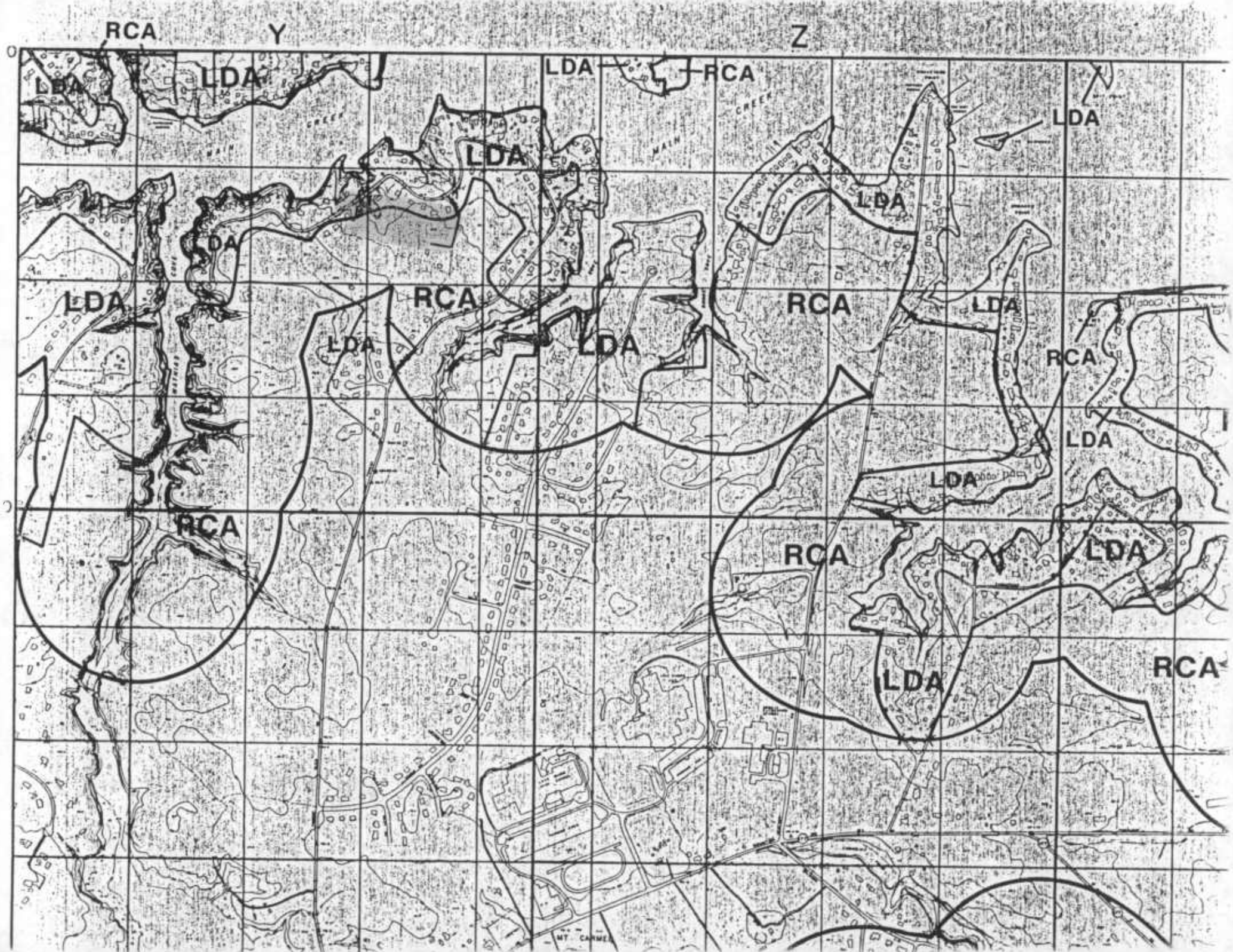
A handwritten signature in dark ink, appearing to read "Mark R. Wedemeyer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark R. Wedemeyer
Development Administrator, PACE

MRW/kml

cc: Ronald Nelson, Land Use Officer
Steven R. Cover, Director, PACE
Joseph J. Elbrich, Jr., Assistant Director, PACE
Frank W. Ward, Assistant Director, PAC
Michael K. Murray, PACE





CRITICAL AREA COMMISSION GUIDELINES FOR EVALUATION OF
LOCAL PROGRAMS DURING COMPREHENSIVE REVIEWS
REGARDING USES IN THE RESOURCE CONSERVATION AREA

1. Land use and development in the Critical Area are subject to the regulations and policies of the Criteria, as implemented through local Critical Area Programs. Where conflicts exist between the Criteria and either pre-existing underlying zones or locally-designated Critical Area zones, the Criteria control. Conflicts will be resolved through the comprehensive review process.
2. Institutional uses should be regarded as identical to industrial and commercial uses in terms of environmental performance and consistency with permitted uses in the RCA.
3. Intensification or expansion of existing industrial, commercial, and institutional facilities and uses may, but not necessarily shall, be permitted in the RCA. A variance in accordance with COMAR 27.01.11, is required if such intensification or expansion involves a use which does not conform with provisions of a local Program.
4. Any additional facility, structure, or use not directly related to and a part of an existing industrial, commercial or institutional use in location, nature, and legal incorporation shall be considered a new use and may require growth allocation.
5. Any additional structures, facilities, and uses that are found to be unacceptable uses of the RCA, according to the guidelines listed above, must be located outside of the RCA or will require growth allocation.
6. If a use can be located outside of the RCA, it should be located outside of the RCA.

Approved by CAC - 7/7/93

Queen Anne's County Critical Area Ordinance

ENVIRONMENTAL PROTECTION

(v) Certain nonresidential uses may be permitted in Resource Conservation Areas if it is first determined by the Department that the proposed use is one of the following:

1. The proposed use is a home occupation as provided for in the Queen Anne's County Zoning Ordinance.

2. The proposed use is a resource utilization use and/or activity including agriculture, forestry, and aquaculture provided such use or uses comply with the applicable provisions of the Queen Anne's County Critical Area Program, this subtitle, and other applicable regulations.

3. The proposed use is a golf course, but not including main buildings and/or structures, e.g., club house, pro-shop, etc.

4. The proposed use is a cemetery that is an accessory use to an existing church.

5. The proposed use is a bed and breakfast facility located in an existing residential structure, but not a hotel or motel.

6. The proposed use is a gun club and skeet-shooting range or similar use but not including main buildings and/or structures, e.g., club house, pro-shop, etc.

7. The proposed use is an accessory or supportive use clearly incidental to an existing industrial and commercial facility, including those that directly support agriculture, forestry, aquaculture, or residential development and is located wholly within an existing structure or structures. Any expansion of existing structures may only be approved with growth allocation.

8. The proposed use will be completely housed in an existing building or buildings expressly designed for the proposed use and use of the building or buildings has not been abandoned for more than one year.

9. The proposed use is a water-dependent research facility or activity operated by State, federal or local agencies, educational institutions, or non-profit organizations provided non-water dependent facilities or structures are, to the extent possible, located outside of the Buffer.

10. The proposed use is a commercial water-dependent fisheries facility including but not limited to, structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations and fisheries activities. These uses may be permitted in the Buffer.

11. The proposed use is a public beach or other public water-oriented recreation or education use or activity including, but not limited to publicly owned boat launching and docking facilities and fishing piers. These uses may be permitted in the Buffer.

QUEEN ANNE'S COUNTY CODE

12. The proposed use is a community marina or other non-commercial boat docking and storage facility.

13. The proposed use is an essential service as defined in § 14-111 of this subtitle.

14. The proposed use is a public utility structure or service other than essential services as defined in § 14-111 of this subtitle.

15. The proposed use is storage of fertilizers, chemicals, pesticides, or polluting materials or substances used in conjunction with agriculture which shall be contained to the extent that any erosion of or runoff from such materials or substances is prevented provided such use is clearly incidental to a farm operation.

16. The proposed use is a sand and gravel pit, borrow pit, clay pit or other mineral extraction use, including the processing or compounding of materials composed largely of such products at the site, but excluding concrete mixing and asphalt plants.

17. The proposed use is a private airstrip for the land owners personal use which is clearly incidental and accessory to an existing residential use.

18. The proposed use is non-commercial boat building and repair, including motor repair.

19. The proposed use is an emergency service as defined in § 14-111 of this subtitle.

20. The proposed use must be allowed, by-right, under State law in a zoning district that permits detached single family dwellings, i.e., homes emphasizing special services, treatment and care such as group homes of less than nine people and family day care.

(vi) Local government projects may be permitted in Resource Conservation Areas without obtaining growth allocation if certified by the County Commissioners as being a project of "local significance". A project of local significance is defined as a public project of minor scale which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located, does not substantially affect the Queen Anne's County Critical Area Program, and is not considered a major development by the Critical Area Commission.

(vii) Except as may be provided in subparagraphs (v) and (vi) of this paragraph, any additional structures, facilities, or uses not directly related to and a part of an existing industrial, commercial, or institutional use in terms of location, nature, and legal incorporation shall be considered a new use and must be located outside of the RCA.

(c) *Density.*